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Abdul Karim bin Ayob v Kumpulan Karangkraf Sdn Bhd & Ors

HIGH COURT (KUALA LUMPUR) — SUIT NO S2-23-17 OF 1996
KAMALANATHAN RATNAM J
B 24 AUGUST 1999

***Tort** — Damages — Defamation — False and malicious publication — Plaintiff was public servant — Matters to be considered — No apology — Conduct of parties — Plaintiff's position and standing — Nature of libel — Extent of publication — Quantum to be awarded*

C

***Tort** — Defamation — Libel — Test of the ordinary man — Whether word 'miang' is defamatory — Whether plaintiff's photograph in uniform with caption words were defamatory to his reputation as public servant*

D The plaintiff claimed that the first defendant had falsely and maliciously printed and published statements in an article against him. The plaintiff submitted that, in its natural and ordinary meaning, the passages printed meant that the plaintiff encouraged 'miang' among men, and further that the plaintiff admitted to a feeling of 'miang' towards women. The plaintiff also vehemently denied that he E authorized the taking of the photograph that appeared with the article.

Held, finding the defendants liable and awarding damages in the sum of RM100,000:

F (1) The ordinary man-in-the-street would immediately connote 'miang' as relating to a person lusting for sexual favours or sexual intercourse. Thus, the court was satisfied that by referring to the plaintiff as 'miang', the defendants, who did not deny the publication, ought to be found liable as clearly that the reference G to the plaintiff was defamatory of him (see p 247D–E, H–I).

(2) In assessing damages, the court must consider the conduct of the plaintiff and the defendants, the plaintiff's position and standing, the nature of the libel, the extent of the publication and the refusal of an apology. There must also be consideration given to the H mental distress, hurt, anxiety and distress caused to the plaintiff as a result of the publication. Further, the fact that the plaintiff was a public servant subjected, in so far as their conduct was concerned, to constraint and restraint was expected to be impeccable; their standing in society irreproachable. They are subjected to general orders which guard and guide their conduct I throughout their life in service. Therefore, when an injustice such as this had been beseted upon them, only the majesty of the law could come to their rescue (see p 248A–C).

[Bahasa Malaysia summary

Plaintif mendakwa bahawa defendan pertama telah secara palsu dan niat jahat mencetak dan menerbitkan kenyataan-kenyataan di dalam sebuah artikel terhadap beliau. Plaintif menghujahkan bahawa, di dalam maksud semulajadi dan biasa, petikan-petikan yang telah dicetak tersebut bermaksud bahawa plaintif menggalakkan kelakuan 'miang' di kalangan lelaki, dan seterusnya bahawa plaintif mengaku berperasaan 'miang' terhadap perempuan. Plaintif juga telah menafikan sekeras-kerasnya bahawa beliau telah memberikan kebenaran pengambilan gambar foto yang telah disiarkan bersama artikel tersebut.

Diputuskan, mendapati defendan bertanggungjawab dan mengawardkan ganti rugi sejumlah RM100,000:

(1) Seseorang biasa di jalanan akan serta-merta mengkonotasikan 'miang' dengan mengkaitkan seseorang yang berkeinginan pelawaan seksual atau perhubungan seksual. Oleh demikian, mahkamah telah berpuas hati bahawa dengan merujukkan plaintif sebagai 'miang', defendan-defendan, yang tidak menafikan penerbitan tersebut, sepatutnya didapati bertanggungjawab kerana dengan jelas rujukan kepada plaintif adalah fitnah mengenai beliau (lihat ms 247D–E, H–I).

(2) Di dalam menaksir ganti rugi, mahkamah perlu mempertimbangkan kelakuan plaintif dan defendan-defendan, jawatan dan kedudukan plaintif, sifat semulajadi fitnah bertulis tersebut, takat penerbitan tersebut dan keengganan meminta maaf. Pertimbangan juga perlu diberikan terhadap penderitaan mental, perasaan terluka, kerisauan dan penderitaan yang dialami oleh plaintif akibat daripada penerbitan tersebut. Tambahan pula, hakikat bahawa plaintif merupakan seorang kakitangan awam yang tertakluk, setakat mana yang melibatkan kelakuan mereka, kepada kekangan dan sekatan yang dijangkakan tidak dapat dielakkan; kedudukan mereka dalam masyarakat tiada cacat celanya. Mereka tertakluk kepada perintah-perintah am yang mengawal dan membimbing kelakuan mereka sepanjang kehidupan mereka di dalam perkhidmatan. Oleh demikian, apabila suatu ketidakadilan sebegini melandai mereka, hanya kuasa undang-undang sahaja yang boleh menyelamatkan mereka (lihat ms 248A–C).]

Notes

For cases on libel, see 12 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 165–230.

For cases on damages on defamation, see 12 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 91–108.

A *Dennis Appaduray* (*R Rajasingam* with him) (*Sidek Teoh Wong & Dennis*) for the plaintiff.

Haris Ibrahim (*Nurul Akmar bte Omar* with him) (*Adam & Co*) for the first, second, fourth, fifth and sixth defendants.

Cur Adv Vult

B

Kamalanathan Ratnam J:

The claim

The plaintiff claims against the first, second, fourth, fifth and sixth defendants inter alia: (i) general damages; (ii) an apology by way of C publication; (iii) a written undertaking not to publish any similar article against the plaintiff; (iv) costs, in respect of an article ('the article') appearing in a Malay weekly magazine known as 'Mingguan Wanita' ('the magazine') for the week commencing 26 August - 2 September 1994 under the heading 'Suami tebar cinta macam menebar jala' where it is alleged that D the first defendant falsely and maliciously printed and published statements allegedly made by the plaintiff concerning the said article and further enclosing a photograph of the plaintiff in full fireman's uniform with a caption 'Encik Karim — sekadar usik-usik apa salahnya'.

Findings of the court

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The first defendant was at the material time the owner of the said magazine with the second defendant, the publisher. The fourth defendant was also at all material times the writer of the said article in the said magazine. The fifth defendant was the photographer, and the sixth defendant, the printer of the said magazine.

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Facts

Some time in or about the month of December 1993, or early January 1994, the fourth defendant, together with another journalist/reporter and a photographer from 'Majalah Pentas Dunia' went to the Balai Bomba G Petaling Jaya to write an article about the lives of single firemen. The plaintiff, who at that material time was the Penolong Pegawai Penjaga Bomba, was instructed by his superior, Haji Salam bin Jumiran (PW5), to meet them and arrange for the said interview with the firemen.

In the course of this meeting, which was held in the plaintiff's office/ H room a photograph of the plaintiff in uniform was taken. The plaintiff contends that the said photograph was taken without his knowledge and permission. But more on this later.

The fourth defendant testified that on 16 April 1994 at about 3pm, he again interviewed the plaintiff at the Balai Bomba Petaling Jaya over the telephone. However, it is in evidence that on the said date and time the I plaintiff was not in the Balai Bomba Petaling Jaya because as of 15 January 1994 he was working at Balai Bomba Pelabuhan Kelang. He also testified that on that date he was on duty at Pelabuhan Kelang from 0800 hours to

1615 hours and after that he was 'on-call' duty. He also confirmed that on the said date he never received any call from any journalist/reporter. The plaintiff called as his witness, PW5, the officer-in-charge of the Balai Bomba Petaling Jaya. He confirmed after referring to the official letter dated 24 December 1993 that the plaintiff was indeed transferred to Balai Bomba Pelabuhan Kelang as of 15 January 1994. I have watched the plaintiff testify. I find him a witness of truth. He gave his evidence with utmost clarity although at times he became overtly emotional because of the reaction of his wife to the said publication. It is therefore my finding that if at all the fourth defendant (DW2) telephoned the Balai Bomba Petaling Jaya on 16 April 1994 then obviously it was not the plaintiff with whom he spoke. In the absence of any evidence before me that the plaintiff had enemies who wanted to impersonate him, it is my finding that the fourth defendant did not make that call. Having made the earlier visit, he must have assumed that the plaintiff would still be at the Petaling Jaya station and on that assumption, the fourth defendant must have concocted the alleged conversation. However, he used the photograph taken earlier in the article. As for the photograph, whilst the plaintiff vehemently denies that he authorised the taking of the photograph that appeared with the article, and pleaded that he was even unaware that it was taken, I reject this part of the plaintiff's evidence. He must be under the mistaken belief that if he agreed that the photograph was taken with his consent, it must be his fear that it would mean an admission that he gave the interview on 16 April 1994. It is important to note that it was this alleged interview that gave rise to the complaint of the plaintiff resulting in this suit. In their 26 August–2 September 1994 issue of 'Mingguan Wanita' the defendants headlined the impugned article which when translated reads as follows:

A B C D E

> Husband spreads love like casting a net.

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The translation of the impugned article as pleaded reads as follows:

> The issue of 'miang' or otherwise depends on the individual. It is not the gender that differentiates the action. Personally, I can say that men being 'miang' has its charm. What more if a man does it, it's okay. If a woman is 'miang', her behaviour is really bad,' narrated En Karim with a smile.

G

It continues:

> Personally, I can say that men being 'miang' has its charm ... if a man does it, it's okay. If a woman is 'miang', her behaviour is really bad, ...

Further, the plaintiff is quoted as having said:

H

> If a man is not 'miang', he is not a man. Don't misjudge, men being 'miang' has its place. Just teasing, to look at a woman's reaction, if she is angry, it means she likes it.
>
> The attribute of a man depends on whether he is 'miang' or otherwise.
>
> The reaction of being angry when purposely teased shows that the woman likes it.
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> After all, men being 'miang' is harmless, merely to pass the time. As for me, if someone says that man is 'miang', I would only smile.

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A Actually, men being 'miang' is caused by women themselves. By clapping one hand, there will be no sound. Isn't that so?', asked En Karim again.

It is the plaintiff's case that in its natural and ordinary meaning the passages quoted above meant that the plaintiff encouraged 'miang' among men, and further that the plaintiff admits to a feeling of 'miang' towards women.

B It is obvious that the alleged passage, attributed to the plaintiff as having been spoken on 16 April 1994, is the creation of the fourth defendant's own fertile imagination. He had embarked, with a journalistic licence into the realm of fiction, on a flight of fancy.

It would seem that the central word causing embarrassment to the C plaintiff is 'miang'. The plaintiff contended that 'miang' meant lustful. The defendant called as its expert witness, a professor from the University of Malaya attached to the Malay Language and Literature, to give the meaning attributed to 'miang'. To my mind, the meaning that ought to be attributed to the word 'miang' is not what a professor of languages ensconced in his D air-conditioned room, thinks it means, but what the ordinary man in the street would think it means. The *Kursus Lengkap* defines 'miang' as 'fine hairs on bamboo shoots, etc that cause itch'; 'on heat'; 'lustful'. The *Chambers Dictionary 20th Century* defines amongst others, 'itch' as 'a constant teasing desire'. The ordinary man-in-the-street would in my view immediately connote 'miang' as relating to a person lusting for sexual E favours or sexual intercourse. The word 'miang' must be given its natural and ordinary meaning. The derogatory connotation can well be imputed by the fact that it also refers to 'being on heat'. It is an accepted fact that only animals go on heat at certain times. The connotation therefore is that when a person is referred to as 'miang' he is as lustful as an animal with the F unrestrained urge for a sexual encounter.

In so far as the fifth defendant is concerned, there is clear evidence that at the material time, when the alleged photograph as shown in the magazine, was taken, she was not with the first defendant, as she was only employed with the first defendant as of 8 August 1994. Just because her G name appears as the photographer, does not mean that she was the photographer. The first defendant has to answer why her name appeared and he has failed to do so. The claim is therefore dismissed as against the fifth defendant with costs.

It is my finding that an ordinary reader of the said magazine upon coming across the said article would easily infer that the plaintiff, although H a high ranking public servant in uniform, is by nature lustful of women, that he holds the view that such a feeling is harmless, that it is his favourite pastime to tease women and that he feels that the more he teases women the more they like it and that it would be unmanly for a male not to be lustful. I am therefore satisfied that by referring to the plaintiff as 'miang' the I defendants, who do not deny the publication (except the fifth defendant), ought to be found liable as clearly in my view the reference to the plaintiff is defamatory of him.

Quantum

It is an accepted fact that in an action for defamation the assessment of general damages does not depend on any legal precept. However, in assessing damages the court will consider the conduct of the plaintiff and the defendants, the plaintiff's position and standing, the nature of the libel, the extent of the publication and the refusal of an apology. In addition, there must also be consideration given to the mental distress, hurt, anxiety and distress caused to the plaintiff as a result of the publication. In this case, in addition to the above, I also take into consideration the fact that the plaintiff is a public servant. Public servants are subjected, in so far as their conduct is concerned, to constraint and restraint. Their conduct is expected to be impeccable; their standing in society irreproachable. They are subjected to general orders which guard and guide their conduct throughout their life in service. Therefore when an injustice such as this is beset upon them only the majesty of the law can come to their rescue; and so it shall.

The plaintiff says his rank is equivalent to that of an OCPD (officer-in-charge of police district). Even if this is not true the fact remains that the plaintiff is not an ordinary fireman. I therefore award the plaintiff, having taken into account all facets of the case, damages in the sum of RM100,000 with interest at 4% pa from date of publication, that is, 26 August 1994, to date of judgment and costs.

Unfortunately, the plaintiff did not ask for aggravated damages as I would have been inclined to grant the same because of the fictitious concoction of the interview when such an event did not occur at all.

Order accordingly.

Reported by Ezatul Zuria Azhari